

Checklist for West Virginia UIC Regulations for SDWA Legal Authority (Part 124)

[SEQ CHAPTER \h \r 1]40 CFR Part 124 vs. West Virginia UIC Regulations				
Code of Federal Regulations		Current West Virginia Statutes and Regulations		Difference
Citation	Summary	Citation	Summary	
40 CFR 124 - Procedures For Decisionmaking Subpart A - General Program Requirements				
124.3	<p>§ 124.3 Application for a permit. Any person who requires a permit under the UIC program shall complete, sign, and submit to the Director an application. The Director shall not begin the review process until the applicant has fully complied with the application requirements. Permit applications must comply with the signature and certification requirements of 144.32. If an applicant fails to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken.</p>	47-13-14.10.a-c. , 47-13-14.11 Injection Well Permitting Program	<p>14.10. Application for a Permit. This section shall apply in addition to the requirements of subsections 8.5, 9.5, 10.5, and 14.3.</p> <p>14.10.a. Permit application. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Director as described in this section. Persons currently authorized with UIC authorization by rule shall apply for permits when required by the Director.</p> <p>14.10.b. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.</p> <p>14.10.c. Completeness. The Director shall not issue a permit under a program before receiving a complete application, except for an emergency permit. An application for a permit under a program is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction.</p>	<p>2020 rule was revised to reference section 9.5 (Class II) and 14.3 (Class VI).</p> <p>Although the state regulation does not include a timeframe for a review of completeness, the timeframes apply to EPA programs only.</p> <p>The state regulation does not have an equivalent to 40 CFR 124.3(d) (i.e., if an applicant fails to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken). However, this provision may not apply to states.</p>

124.3 continued		West Virginia Code of State Rules (CSR) 35-4-5.2.a. Permits, Notice, Review.	<p>14.11. Signatories to Permit Applications and Reports.</p> <p>14.11.a. Applications. All permit applications, except those submitted for Class 2 wells under the UIC program, shall be signed as follows:</p> <p>14.11.a.1. For a corporation: by a principal officer of at least the level of vice-president;</p> <p>14.11.a.2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or</p> <p>14.11.a.3. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.</p> <p>5.2. Application for Permit; Issuance, Conditions and Modifications.</p> <p>5.2.a. An application for any well work permit required for an oil or gas well or an underground storage well by W. Va. Code §22-6-6, except for permits to plug a well, shall be made on Form WW- 2(B), "Application for Well Work Permit," and shall be accompanied by:</p> <p>5.2.a.1. A "Notice of Application for a Well Work Permit" in the form prescribed by subsection 5.4 below;</p> <p>5.2.a.2. A plat in the form prescribed by section 9 below;</p> <p>5.2.a.3. A bond in one of the forms prescribed by section 10 below, or in lieu thereof cash or collateral security allowed by W. Va. Code §22-6-26;</p> <p>5.2.a.4. Form WW-9, "Construction and Reclamation Plan," applicable to the plan required by W. Va. Code §22-6-6(d) and a plan for performing the reclamation required by W. Va. Code §22-6-30 and section 16 below;</p> <p>5.2.a.5. The applicable fee(s), which include...</p> <p>5.2.a.6. If applicable, the consent required by W. Va. Code §22-6-21.</p>	<p>It appears that the state oil and gas regulation does not include completeness, signature, and certification requirements, but the state's Office of Oil and Gas Notice and Application for a Well Work Permit does include signature and certification requirements (see Form WW-2A, available at [HYPERLINK "http://www.dep.wv.gov/oil-and-gas/GI/Forms/Documents/Permit%20Packet.%2005-07-2013.pdf"]).</p> <p>The requirements at 47-13-13 apply to all UIC wells, including Class II wells.</p>
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124.4(a)-(b)*	<p>§ 124.4 Consolidation of permit processing.</p> <p>Whenever a facility or activity requires a permit under more than one statute covered by these regulations, processing of two or more applications for those permits may be consolidated. Draft permits may be prepared simultaneously. Whenever draft permits are prepared at the same time, the statements of basis (required under Sec. 124.7 for EPA-issued permits only) or fact sheets (Sec. 124.8), administrative records (required under Sec. 124.9 for EPA-issued permits only), public comment periods (Sec. 124.10), and any public hearings (Sec. 124.12) on those permits should also be consolidated. The final permits may be issued together. Whenever an existing facility requires additional permits under one or more of the statutes covered by these regulations, the permitting authority may coordinate the expiration date(s) of the new permit(s) with the expiration date(s) of the existing permit(s) so that all permits expire simultaneously.</p>		No reference found.	This provision is optional.

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124.4(c)	<p>Processing of permit applications under paragraph (a) or (b) of this section may be consolidated as follows:</p> <ol style="list-style-type: none"> 1) The Director may consolidate permit processing whenever a facility requires all permits either from EPA or from an approved State. (2) The Regional Administrator and the State Director(s) may agree to consolidate draft permits whenever a facility or activity requires permits from both EPA and an approved State. (3) Applicants may recommend whether or not the processing of their applications should be consolidated. 		No reference found.	This provision is optional.

[SEQ CHAPTER \h \r 1] **40 CFR Part 124 vs. West Virginia UIC Regulations**

Code of Federal Regulations		Current West Virginia Statutes and Regulations		Difference
Citation	Summary	Citation	Summary	
124.5(a)	§ 124.5 Modification, revocation and reissuance, or termination of permits. Permits may be modified, revoked and reissued, or terminated at the request of any interested person or upon the Director's initiative, for the reasons specified in 144.39 or 144.40. All requests shall be in writing and shall contain facts or reasons supporting the request.	47-13-14.12.f, h. Injection Well Permitting Program	14.12.f. Permit actions. This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, suspension or revocation, or notification of planned changes or anticipated noncompliance, does not stay any permit condition. 14.12.h. Duty to provide information. The permittee shall furnish to the Director within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit. 14.18.a. Cause for modification. ... 14.19. Revocation and Suspension of Permits.	Similar. The state regulation does not require that requests be in writing and contain facts or reasons supporting the request. 2020 revisions to numbering only; the differences noted above remain.

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124.5(a) continued		CSR 35-4-5.2.f. Permits, Notice, Review.	5.2.f. The permit and any conditions to or modifications of the proposed permitted well work shall be issued by endorsement on or attachment to the "Permit" copy of the Application (Form WW-2(B), WW-3(B), or WW-4(B), as applicable).	<p>It appears that the state oil and gas regulation requires approval on any modification (either by a written "attachment" to the permit or by verbal "endorsement"). It appears that the submission of the full permit application package is required to re-work (e.g., drill deeper). It also appears that the submission of the full permit application package is required to conduct hydraulic fracturing (see 35 CSR 8: Rules Governing Horizontal Well Development). It does not appear that the Director or any interested person has authority to initiate modifications at any time.</p> <p>It appears that the state oil and gas regulation does not address revocation and re-issuance or termination of permits.</p> <p>However, note that the state UIC regulation has similar requirements to the federal rule for permit modification, revocation and reissuance, and suspension or revocation at CSR 47-13-14.12.f + h and 47-13-14.18-19, and these requirements apply to all UIC wells, including Class II wells.</p>

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124.5(b)	If the Director decides the request is not justified, he or she shall respond in writing giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Regional Administrator may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Environmental Appeals Board may direct the Regional Administrator to begin modification, revocation and reissuance, or termination proceedings under paragraph (c) of this section. The appeal shall be considered denied if the Environmental Appeals Board takes no action on the letter within 60 days after receiving it. This informal appeal is, under 5 U.S.C. 704, a prerequisite to seeking judicial review of EPA action in denying a request for modification, revocation and reissuance, or termination.		No reference found.	It appears that the state regulation does not contain an equivalent provision. This provision is not required for primacy under 40 CFR 145.11.

[SEQ CHAPTER \h \r 1] **40 CFR Part 124 vs. West Virginia UIC Regulations**

Code of Federal Regulations		Current West Virginia Statutes and Regulations		Difference
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124.5(c)	<p>1) If the Director tentatively decides to modify or revoke and reissue a permit under 144.39, he or she shall prepare a draft permit under 124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. For revoked and reissued permits, the Director shall require the submission of a new application.</p> <p>2) Only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued, the entire permit is reopened. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.</p> <p>(3) "Minor modifications" as defined in 144.41 are not subject to the requirements of this section.</p>	47-13-14.18. Injection Well Permitting Program	<p>14.18. Modification or Revocation and Reissuance of Permits. When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in subdivisions 14.18.a and 14.18.b of this section for modification or revocation and reissuance or both exists. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of subdivision 14.18.c of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section or subsection 14.20, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in subsection 14.20 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared.</p>	<p>Similar.</p> <p>2020 revisions to numbering only; no concerns.</p>

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Code of Federal Regulations		Current West Virginia Statutes and Regulations		Difference
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124.5(c) continued		47-13-14.32.a. Injection Well Permitting Program	14.32. Draft Permits. 14.32.a. Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.	2020 revisions to numbering only; no concerns.
		47-13-14.12.f. Injection Well Permitting Program	14.12.f. Permit actions. This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, suspension or revocation, or notification of planned changes or anticipated noncompliance, does not stay any permit condition.	
124.5(d)-(e)	<p>1) If the Director tentatively decides to terminate a permit under 144.40, he or she shall issue a notice of intent to terminate, following the same procedures as for a draft permit prepared under Sec. 124.6.</p> <p>2) [Not applicable to UIC permits]</p> <p>3) In the case of EPA-issued permits, a notice of intent to terminate or a complaint shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under 145.25(b)(1)</p> <p>When EPA is the permitting authority, all draft permits (including notices of intent to terminate) shall be based on the administrative record as defined in Sec. 124.9.</p>	<p>47-13-14.32.a. Injection Well Permitting Program</p> <p>47-13-2. Definitions</p>	<p>14.32. Draft Permits. 14.32.a. Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.</p> <p>"Draft permit" means a document indicating the Director's tentative decision to issue, modify, suspend, revoke, revoke and reissue, or reissue a "permit". A notice of intent to revoke a permit is a type of "draft permit". A denial of a request for modification, suspension, revocation, or revocation and reissuance, is not a "draft permit".</p>	<p>2020 revisions to numbering only; the differences noted below remain.</p> <p>The state regulation does not specifically require the Director to issue a notice of intent to terminate; however, in defining a draft permit the state includes notice of intent to revoke a permit (the state does not use the term "terminate.").</p> <p>The state regulation also does not include language related to EPA transferring permitting to a state or EPA being permitting authority; however, this language is not applicable to states with primacy.</p>

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124.6(a)-(b)	<p>§ 124.6 Draft permits. Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application. If the Director tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny, following the same procedures as for a draft permit prepared under this section. See Sec. 124.6(e). If the Director's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (d) of this section.</p>	<p>47-13-14.32.a. Injection Well Permitting Program</p> <p>CSR 35-4-5.2.f. + i: Application for Permit; Issuance, Conditions and Modifications.</p>	<p>14.32. Draft Permits. 14.32.a. Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.</p> <p>5.2.f. The permit and any conditions to or modifications of the proposed permitted well work shall be issued by endorsement on or attachment to the "Permit" copy of the Application (Form WW- 2(B), WW-3(B), or WW-4(B), as applicable).</p> <p>5.2.i. The determination to deny a permit under the provisions of W. Va. Code §22-6-6(h) or to deny or condition a permit under the provisions of W. Va. Code §22-6-11 shall be in writing and issued within sixty (60) days from the date the complete Notice and Application, including all required documents are filed.</p>	<p>The state regulation does not require the Director to issue a notice of intent to deny.</p> <p>2020 revisions to numbering only; the difference noted above remains.</p> <p>Permits must be endorsed/ approved, but there is no mention of issuing draft permits in the state oil and gas regulation. The requirements at 47-13-13.32.a apply to all UIC wells, including Class II wells.</p>

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124.6(d)-(e)	A draft permit shall contain the following: all conditions under 144.51 and 144.42; all compliance schedules under Sec. 144.53; all monitoring requirements under 144.54; and permit conditions under Sec. 144.52. All draft permits prepared by EPA under this section shall be accompanied by a statement of basis (Sec. 124.7) or fact sheet (Sec. 124.8), and shall be based on the administrative record (Sec. 124.9), publicly noticed (Sec. 124.10) and made available for public comment (Sec. 124.11). The Regional Administrator shall give notice of opportunity for a public hearing (Sec. 124.12), issue a final decision (Sec. 124.15) and respond to comments (Sec. 124.17). An appeal may be taken under Sec. 124.19. Draft permits prepared by a State shall be accompanied by a fact sheet if required under Sec. 124.8.	47-13-14.32. Injection Well Permitting Program	14.32. Draft Permits. 14.32.a. Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application. 14.32.b. If the Director decides to prepare a draft permit, it shall contain the following information: 14.32.b.1. All conditions under subsections 14.6, 14.7, and 14.12; 14.32.b.2. All compliance schedules; and 14.32.c.3. All monitoring requirements.	The state regulation does not require a statement of basis; however, this requirement applies to EPA programs only. The state regulation does not explicitly require that the fact sheet be based on the administrative record, and it does not mention an appeal process; however, these requirements apply to EPA programs only.
		47-13-14.31.a. Injection Well Permitting Program	14.31.a. A fact sheet shall be prepared for every draft permit for a major facility or activity and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person and to the persons required under subparagraphs 14.24.c.1.A, 14.24.c.1.B, and 14.24.c.1.C.	WV Code 22-11-21 provides for appeals to EQB for UIC permits. 2020 revisions to numbering only; no concerns.
		47-13-14.24.a.1. Injection Well Permitting Program	14.24.a. Scope. Public notice shall be given that the following actions have occurred: 14.24.a.1. A draft permit has been prepared; or	WV Code 22-6-28 does allow any person - "any well operator or coal operator adversely affected by a final decision" and "any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director, or by the issuance or denial of a permit, or by the permit's terms and condition" -- to file an appeal. (OG rule) WV Code 22-6-41 provides for judicial review of permits under the O/G rule.

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124.6(d)-(e) continued		47-13-14.30. Injection Well Permitting Program	14.30. Response to Comments. 14.30.a. Any time that any final permit is issued, the Director shall prepare a response to comments. This response shall: 14.30.a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and 14.30.a.2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing. 14.30.b. The response to comments shall be available to the public.	2020 revisions to numbering only; no concerns.

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124.6(d)-(e) continued		47-13-14.26. Injection Well Permitting Program	14.26. Public Comment and Requests for Public Hearings. During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subsection 14.30.	2020 revisions to numbering only; no concerns.
		47-13-14.27. Injection Well Permitting Program	14.27. Public Hearings. 14.27.a. The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest of issues relevant to the draft permit(s). The Director also may hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. 14.27.b. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under paragraph 14.24.b.1 shall automatically be extended to ten (10) days after the close of any public hearing under this section. 14.27.c. A tape recording or written transcript of the hearing shall be made available to the public, upon request.	2020 revisions to numbering only; no concerns.

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124.8	<p>§ 124.8 Fact sheet. A fact sheet shall be prepared for every draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person. The fact sheet shall include:</p> <ol style="list-style-type: none"> 1) a facility description; 2) the type and quantity of fluids to be injected; 3) the basis for the draft permit conditions including references; 4) justified or unjustified variances to required standards; 5) procedures for reaching a final decision on the permit; and 6) a contact person for additional information. 	47-13-14.31. Injection Well Permitting Program	<p>14.31.a. A fact sheet shall be prepared for every draft permit for a major facility or activity and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person and to the persons required under subparagraphs 14.24.c.1.A, 14.24.c.1.B, and 14.24.c.1.C.</p> <p>14.31.b. The fact sheet shall include, when applicable:</p> <p>14.31.b.1. A brief description of the type of facility or activity which is the subject of the draft permit;</p> <p>14.31.b.2. The type and quantity of fluids, which are proposed to be or are being injected;</p> <p>14.31.b.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;</p>	<p>Same, except does not require a description of variances to required standards, which is ok if the state does not allow variances.</p> <p>2020 revisions to numbering only; the differences noted above remain.</p>
124.8 continued		47-13-14.31. Injection Well Permitting Program (continued)	<p>14.31.b.4. A description of the procedures for reaching a final decision on the draft permit including:</p> <p>14.31.b.4.A. The beginning and ending dates of the public comment period and the address where comments will be received;</p> <p>14.31.b.4.B. Procedures for requesting a hearing and the nature of that hearing;</p> <p>14.31.b.4.C. Any other procedures by which the public may participate in the final decision; and</p> <p>14.31.b.4.D. Name and telephone number of a person to contact for additional information.</p>	2020 revisions to numbering only; no concerns.

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124.9	<p>§ 124.9 Administrative record for draft permits when EPA is the permitting authority.</p> <p>For EPA-issued permits, the provisions of a draft permit shall be based on the administrative record, including the application, and any supporting data; the draft permit or notice of intent to deny the application or to terminate the permit; the statement of basis or fact sheet; all documents cited in the statement of basis or fact sheet; and other documents contained in the supporting file for the draft permit.</p>		No reference found.	Does not apply to states.

124.10(a)*	<p>§ 124.10 Public notice of permit actions and public comment period. Public notice is required to announce new draft permits or the Director's intent to deny a permit application and to announce public hearings.</p>	<p>47-13-14.24.a. Injection Well Permitting Program</p> <p>WV Code 22-6-9. Notice to property owners</p> <p>CSR 35-4-5.4. Notice to Surface Owners of Record; Proof of Notice; Comments</p>	<p>14.24.a. Scope. Public notice shall be given that the following actions have occurred: 14.24.a.1. A draft permit has been prepared; or 14.24.a.2. A hearing time has been scheduled.</p> <p>(a) No later than the filing date of the application, the applicant for a permit for any well work shall deliver by personal service or by certified mail, return receipt requested, copies of the application, well plat and erosion and sediment control plan required by section six of this article to each of the following persons: (1) The owners of record of the surface of the tract on which the well is, or is to be located; and (2) The owners of record of the surface tract or tracts overlying the oil and gas leasehold being developed by the proposed well work, if such surface tract is to be utilized for roads or other land disturbance ... (b) If more than three tenants in common or other co-owners of interests described in subsection (a) of this section hold interests in such lands, the applicant may serve the documents required upon the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code, or publish in the county in which the well is located or to be located a Class II legal advertisement...</p> <p>5.4.e. Except where notice by publication is permissible under the provisions of W. Va. Code §22-6-9(b), the notice to surface owners of record required by W. Va. Code §22-6-9 shall consist of true, complete copies of all documents required under subsection 5.2 of this rule, and a copy of the "Instructions to the</p>	<p>The state regulation does not require the Director to issue a notice of intent to deny.</p> <p>2020 revisions to numbering only; the differences noted above remain.</p> <p>Permits require notice to surface owners (at CSR 35-4-5.4) with Form WW-2(A), but it appears that the regulations don't require notice to the general public. Transfer applications, however, require public notice (CSR 35-4-10.5). The state oil and gas regulation does not address draft permits or intent to deny.</p> <p>The requirements at 47-13-14.24.a apply to all UIC wells, including Class II and Class VI wells.</p>
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			<p>Surface Owner” provided as part of the Office’s application form.</p> <p>...</p> <p>5.4.g. Notice of publication under the provisions of W. Va. Code §22-6-9(b) shall be substantially as provided in Form WW-71. Proof shall be supplied by affidavit of publication from the newspaper.</p>	
		<p>CSR 35-4-10.5.b.1. Transfer Procedures: Periodical circular. 10.5.c. Notice of Hearing</p>	<p>10.5.b.1. The Office of Oil and Gas will publish from time to time, but not less often than monthly, a circular indicating the status of various applications filed under this rule.</p> <p>10.5.c. Notice of all filings for applications for transfer and designation of operator status under this rule and 35 CSR 5 §3.1 (“Procedure for Designation of Bona Fide Future Use”) will be published by the Office of Oil and Gas, indicating that interested persons may intervene in the application by filing written comments with the Office of Oil and Gas within fifteen (15) days from the date that the circular is published...</p>	

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124.10(b)	All public notice must allow at least 30 days for public comment.	47-13-14.24.b. Injection Well Permitting Program WV Code 22-6-10. Procedure for filling comments; certification of notice.	14.24. Public Participation in Permit Process. 14.24.b. Timing. 14.24.b.1. Public notice of the preparation of the draft permit required under this section shall allow at least thirty (30) days for public comment. 14.24.b.2. Public notice of a hearing shall be given at least thirty (30) days before the hearing. (a) All persons described in subsections (a) and (b), section nine of this article may file comments with the director as to the location or construction of the applicant's proposed well work within fifteen days after the application is filed with the director.	Same. 2020 revisions to numbering only; no concerns. It appears that the state oil and gas regulation only requires 15 days for public comment for transfer applications (CSR 35-4-10.5.c). The regulation does not address comment on permit applications. The statute does, however. Form WW-2A [Notice and Application for a Well Work Permit, Surface Owner Waiver or Coal Waiver; [HYPERLINK "http://www.dep.wv.gov/oil-and-gas/GI/Forms/Documents/Permit%20Packet.%2005-07-2013.pdf"]] also only allows 15 days for public comment. The requirements at CSR 47-13-14.24.b apply to all UIC wells including Class II and Class VI wells.
124.10(c)	Public notice must be given by: 1) mailing to the applicant; 2) mailing to other agencies that have issued or are required to issue a permit	47-13-14.24.c. Injection Well Permitting Program	14.24. Public Participation in Permit Process. 14.24.c. Methods. 14.24.c.1. By mailing a copy of a notice to the following persons (any person otherwise	The state regulation does not include notification to oil and gas agencies or state agencies regulating mineral

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	<p>to the applicant; and to Federal, State, local, and Tribal agencies with jurisdiction over affected resources.</p> <p>3) For Class I UIC permits only, mailing to state and local oil and gas agencies and state agencies regulating mineral exploration and recovery;</p> <p>4) mailing to a mailing list that includes persons who participated in past permitting activities and others who requested to be included on the list</p> <p>5) mailing to local government where facility will be located and to state agencies with jurisdiction over construction or operation.</p> <p>6) For Class VI UIC permits, mail or e-mail to state and local oil and gas agencies and state agencies regulating mineral exploration and recovery, to Director of PWSS program, and to all agencies overseeing UIC wells in the state.</p> <p>7) for major permits, publication of a notice in a daily or weekly newspaper within the area affected by the facility;</p> <p>8) for state-issued permits, in a manner constituting legal notice to the public under State law;</p> <p>9) any other method calculated to give notice to those affected, including press releases.</p>		<p>entitled to receive notice under this paragraph may waive the right to receive notice for any classes and categories of permits):</p> <p>14.24.c.1.A. The applicant;</p> <p>14.24.c.1.B. Any other agency including EPA which the Director knows has issued or is required to issue a RCRA, PSD, NPDES permit for the same facility or activity;</p> <p>14.24.c.1.C. Federal and State and interstate agencies with jurisdiction over fish and wildlife resources, public health, the State Historic Preservation Unit of the Department of Culture and History, and other appropriate government authorities, including any affected states;</p> <p>14.24.c.1.D. Persons on a mailing list developed by:</p> <p>14.24.c.1.D.1. Including those who request in writing to be on the list;</p> <p>14.24.c.1.D.2. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and</p> <p>14.24.c.1.D.3. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in appropriate publications of the State.</p> <p>14.24.c.1.E. By mailing a copy to each agency having authority under State law with respect to the construction or operation of such facility;</p> <p>14.24.c.2. For any permit, the Director shall send the public notice to the applicant who shall be responsible for publication of a Class 1 legal advertisement by a date, and in a paper specified by the Director. Upon publication, the applicant shall send the Director a copy of the certificate of publication. The costs of publication shall be borne by the applicant; and</p>	<p>exploration and recovery, as DEP regulates both OG and UIC.</p> <p>The state regulation also includes agencies with jurisdiction over fish and wildlife resources, public health, preservation units, and other appropriate government authorities, including any affected states.</p> <p>The state regulation does not include newspaper notice for major permits (it is not clear what would constitute a major permit).</p> <p>2020 revisions to numbering only. The differences noted above remain.</p> <p>WV does not include a requirement notify O&G agencies, etc. of a Class VI permit application (however, DEP regulates both O&G and UIC).</p>

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		WV Code 22-6-9. Notice to property owners	<p>14.24.c.3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.</p> <p>(a) No later than the filing date of the application, the applicant for a permit for any well work shall deliver by personal service or by certified mail, return receipt requested, copies of the application, well plat and erosion and sediment control plan required by section six of this article to each of the following...:</p> <p>(1) The owners of record of the surface of the tract on which the well is, or is to be located; and</p> <p>(2) The owners of record of the surface tract or tracts overlying the oil and gas leasehold being developed by the proposed well work, if such surface tract is to be utilized for roads or other land disturbance ...</p> <p>(b) If more than three tenants in common or other co-owners of interests described in subsection (a) of this section hold interests in such lands, the applicant may serve the documents required upon the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code, or publish in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing such notice</p>	<p>The state oil and gas statute and regulation require notice to surface owners and tenants, and to coal operator/owner/lessees [also see Form WW-2(A) - Notice and Application for a Well Work Permit: [HYPERLINK "http://www.dep.wv.gov/oil-and-gas/GI/Forms/Documents/Permit%20Packet.%2005-07-2013.pdf"]]. The form also requires notice to the inspector. Notice must be personal service, certified mail, or a legal notice in the newspaper.</p> <p>State and public agencies and persons on a mailing list do not appear to be required.</p> <p>The requirements at CSR 47-13-14.24.c apply to all UIC wells, including Class II and Class VI wells.</p>

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		<p>CSR 35-4-5.4. Notice to Surface Owners of Record; Proof of Notice; Comments.</p> <p>CSR 35-4-6.2. Notice to Coal Operators, Owners or Lessees</p>	<p>and information as the director shall prescribe by rule, with the first publication date being at least ten days prior to the filing of the permit application: Provided, That all owners occupying the tracts where the well work is, or is proposed to be located at the filing date of the permit application shall receive actual service of the documents required by subsection (a) of this section.</p> <p>5.4.e. Except where notice by publication is permissible under the provisions of W. Va. Code §22-6-9(b), the notice to surface owners of record required by W. Va. Code §22-6-9 shall consist of true, complete copies of all documents required under subsection 5.2 of this rule, and a copy of the "Instructions to the Surface Owner" provided as part of the Office's application form.</p> <p>5.4.g. Notice of publication under the provisions of W. Va. Code §22-6-9(b) shall be substantially as provided in Form WW-71. Proof shall be supplied by affidavit of publication from the newspaper.</p> <p>5.4.h. No permit will be issued until all required proofs of notice have been filed with the Chief.</p> <p>6.2. A copy of the completed notice and application for any permit required by W. Va. Code §22-6-6, including the associated plat and Construction and Reclamation Plan required by section 5 above, shall be used as the form of the Notice to Coal Operators, Owners or Lessees required by W. Va. Code §§22-6-12, 22-6-13</p>	

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			and 22-6-14 and shall be mailed by registered or certified mail to coal operators, owners or lessees. 10.5.b.1. The Office of Oil and Gas will publish from time to time, but not less often than monthly, a circular indicating the status of various applications filed under this rule.	
124.10(d)	<p>All public notices must identify:</p> <ol style="list-style-type: none"> 1) the office processing the permit; 2) contact information of the permittee; 3) a brief description of the business; 4) contact information of the person who may provide additional information; and 5) a description of the comment procedures. <p>In addition to the list above, the public notice of a hearing shall contain the following:</p> <ol style="list-style-type: none"> 1) reference to the date of previous notices relating to the permit; 2) date, time, and place of hearing; and 3) a brief description of the purpose of the hearing. 	<p>CSR 35-4-10.5.b.1. Transfer Procedures: Periodical circular.</p> <p>47-13-14.25.a. Injection Well Permitting Program</p>	<p>14.25. Contents of a Public Notice.</p> <p>14.25.a. All public notices issued under this section shall contain the following minimum information:</p> <p>14.25.a.1. Name and address of the office processing the permit action for which notice is being given.</p> <p>14.25.a.2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.</p> <p>14.25.a.3. A brief description of the business conducted at the facility described in the permit application or the draft permit.</p> <p>14.25.a.4. The name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or fact sheet, and the application.</p> <p>14.25.a.5. A brief description of the comment procedures required by subsections 14.26 and 14.27 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing unless already scheduled, and other procedures by which the public may participate in the final permit decision.</p>	<p>Same.</p> <p>2020 revisions to numbering only; no concerns.</p>

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124.10(d) continued		<p>47-13-14.25.b. Injection Well Permitting Program</p> <p>WV Code 22-6-9. Notice to property owners</p>	<p>14.25.b. In addition to the general public notice described in subdivision 14.25.a, the public notice of a hearing shall contain the following information:</p> <p>14.25.b.1. Reference to the date of previous public notices relating to the permit;</p> <p>14.25.b.2. Date, time and place of the hearing; and</p> <p>14.25.b.3. A brief description of the nature and purposes of the hearing, including the applicable rules and procedures.</p> <p>(a) No later than the filing date of the application, the applicant for a permit for any well work shall deliver by personal service or by certified mail, return receipt requested, copies of the application, well plat and erosion and sediment control plan required by section six of this article to each of the following...:</p>	<p>2020 revisions to numbering only; no concerns.</p> <p>The requirements at 47-13-14 apply to all UIC wells, including Class II and Class VI wells.</p> <p>The state oil and gas regulation does not contain an equivalent provision. The statute explains what the notice must contain. In addition, the instructions to surface owners that are included with Form WW-2(A) - Notice and Application for a Well Work Permit; ([HYPERLINK "http://www.dep.wv.gov/oil-and-gas/GI/Forms/Documents/Permit%20Packet.%2005-07-2013.pdf"]) include contact information for the state and a description of comment procedures. Contact info for the permittee would be included on the application provided with the notice. Note that hearings are only required for transfer applications.</p>

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124.10(e)	The persons listed above in 124.10(c) must be mailed copies of any fact sheets, applications, and draft permits.	47-13-14.25.c. Injection Well Permitting Program WV Code 22-6-9. Notice to property owners	14.25.c. In addition to the general public notice, all persons identified in subparagraphs 14.24.c.1.A, 14.24.c.1.B, and 14.24.c.1.C shall be mailed a copy of the fact sheet, the permit application and the draft permit (a) No later than the filing date of the application, the applicant for a permit for any well work shall deliver by personal service or by certified mail, return receipt requested, copies of the application, well plat and erosion and sediment control plan required by section six of this article to each of the following. ...:	Same. 2020 revisions to numbering only; no concerns. The state oil and gas regulation does not contain an equivalent provision but the statute does—it requires a copy of the application to be provided (fact sheets and draft permits are not required under the state oil and gas laws). The requirements at 47-13-14 apply to all UIC wells, including Class II and Class VI wells.

124.11	<p>§ 124.11 Public comments and requests for public hearings. During the public comment period, any interested person may submit written comments and may request a public hearing.</p>	<p>47-13-14.26. Injection Well Permitting Program</p> <p>CSR 35-4-5.4. Notice to Surface Owners of Record; Proof of Notice; Comments.</p>	<p>14.26. Public Comment and Requests for Public Hearings. During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subsection 14.30.</p> <p>5.4.i. All comments filed pursuant to the provisions of W. Va. Code §22-6-10 shall be in writing, and should contain the name, address and telephone number of the person filing the comment, the well operator's name and well number, and the approximate location of the proposed well site including district and county as indicated in the permit application. Comments may be accompanied by other pertinent documents in support of the comment. Other than as prescribed in this rule, no particular form for the comment is prescribed.</p>	<p>Same.</p> <p>2020 revisions to numbering only; no concerns.</p> <p>Only surface owners and coal operators are notified; it is not clear whether comments from others would be accepted.</p> <p>See instructions [on Form WW-2(A) - Notice and Application for a Well Work Permit; [HYPERLINK "http://www.dep.wv.gov/oil-and-gas/GI/Forms/Documents/Permit%20Packet.%2005-07-2013.pdf"]]</p> <p>The oil and gas regulations do not allow commenters to request hearings, but the statute at WV Code 22-6-15 and 22-6-16 allow the director to arrange a private hearing with well operators and coal operators who submit comments.</p> <p>Note that the requirements at 47-13-14 apply to all UIC wells, including Class II wells.</p>
124.12	<p>§ 124.12 Public hearings.</p>	<p>47-13-14.27.a. Injection Well</p>	<p>14.27. Public Hearings. 14.27.a. The Director shall hold a public hearing whenever he or she finds, on the basis</p>	<p>Same.</p>

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	The Director shall hold a public hearing when he finds a significant degree of public interest in a draft permit or at his discretion.	Permitting Program	of requests, a significant degree of public interest of issues relevant to the draft permit(s). The Director also may hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.	2020 revisions to numbering only; no concerns.
124.13*	<p>§ 124.13 Obligation to raise issues and provide information during the public comment period</p> <p>All persons who believe any condition of a draft permit is inappropriate, or who disagree with the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit, must submit arguments by the close of the public comment period (including any public hearing). Any supporting materials shall be included in full, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other available reference materials. (A comment period longer than 30 days shall be granted under Sec. 124.10 if a commenter demonstrates the need for such time.)</p>	47-13-14.28. Injection Well Permitting Program	14.28. Obligation to Raise Issues and Provide Information During the Public Comment Period. All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director tentative decision to prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All supporting materials shall be included in full and not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and rules, documents of general applicability, or other generally available reference materials. Submitters of comments shall make supporting material not already included in the administrative record available to the State as directed by the Director.	<p>Note that the state regulation does not require the Director to issue a notice of intent to deny, so the state's language is slightly different.</p> <p>The state regulation does not mention the opportunity for a comment period longer than 30 days.</p> <p>2020 revisions to numbering only; the differences noted above remain.</p>

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124.14(a) *	<p>§ 124.14 Reopening of the public comment period.</p> <p>The Regional Administrator may order the public comment period reopened if the procedures of this paragraph could expedite the decisionmaking process. All persons who disagree with any condition of a draft permit or with the Regional Administrator's tentative decision to deny an application, terminate a permit, or prepare a draft permit, must submit factual grounds supporting their position by a date, at least 60 days after public notice under (a)(2) set by the Regional Administrator. Thereafter, any person may file a written response to the material filed by any other person, by a date, at least 20 days after the date set for filing of the material, set by the Regional Administrator.</p> <p>Public notice of any comment period shall identify the issues to which the requirements of Sec. 124.14(a) shall apply. The Regional Administrator may direct that (a)(1) shall apply during the initial comment period if it appears that issuance of the permit will be contested and that applying (a)(1) will substantially expedite the decisionmaking process. The notice of draft permit shall state whenever this has been done.</p> <p>Comment periods longer than 60 days shall be granted to the extent necessary.</p>		No reference found.	Note that the discrepancy between the state regulation and the federal rule is irrelevant because this provision is optional for states.

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124.14 (b)-(e)*	<p>If any data submitted during the public comment period raise new questions concerning a permit, the Regional Administrator may</p> <ol style="list-style-type: none"> 1) Prepare a new draft permit, appropriately modified; 2) Prepare a revised statement of basis, a fact sheet or revised fact sheet and reopen the comment period; or 3) Reopen or extend the comment period to give interested persons an opportunity to comment on the information submitted. <p>Comments filed during the reopened comment period shall be limited to the new questions that caused its reopening. The public notice under Sec. 124.10 shall define the scope of the reopening.</p> <p>Public notice of any of the above actions shall be issued under Sec. 124.10.</p>	47-13-14.29. Injection Well Permitting Program	<p>14.29. Reopening of the Public Comment Period.</p> <p>14.29.a. If any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Director may take one or more of the following actions:</p> <p>14.29.a.1. Prepare a new draft permit, appropriately modified;</p> <p>14.29.a.2. Prepare a revised fact sheet and reopen the comment period under this section; or</p> <p>14.29.a.3. Reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted.</p> <p>14.29.b. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice shall define the scope of the reopening.</p>	<p>Same.</p> <p>2020 revisions to numbering only; no concerns.</p>
124.15*	<p>§ 124.15 Issuance and effective date of permit.</p> <p>After the close of the public comment period, the Regional Administrator shall issue a final permit decision, and he shall notify the applicant and each person who submitted comments. The final decision shall become effective 30 days after the service of notice of the decision.</p>		No reference found.	<p>This provision is not mandatory for states under 145.11. The statute does require the director to provide a copy of the final permit to those who submitted comments if they request it (WV Code 22-6-11).</p>

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124.16(a) *	<p>§ 124.16 Stays of contested permit conditions.</p> <p>If a request for review of a permit is filed, the effect of the contested permit conditions shall be stayed. Uncontested permit conditions shall be stayed only until the date specified in paragraph (a)(2)(i). If the permit involves a new facility, the applicant shall be without a permit pending final agency action. See also Sec. 124.60. Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. The Regional Administrator shall identify the stayed provisions of permits for existing facilities. All other provisions of the permit for the existing facility, become fully effective and enforceable 30 days after the date of the notification required in paragraph (a)(2)(ii). The Regional Administrator shall, as soon as possible after receiving notification from the EAB of the filing of a petition for review, notify the EAB, the applicant, and all other interested parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in paragraph (a)(2)(i) of this section.</p>		No reference found.	This provision is optional for states.

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124.16(b) -(c)*	<p>A stay may be granted based on the grounds that an appeal to the Administrator of one permit may result in changes to another EPA-issued permit only when each of the permits involved has been appealed to the Administrator and he or she has accepted each appeal. No stay of an EPA-issued permit shall be granted based on the staying of any State-issued permit except at the discretion of the Regional Administrator and only upon written request from the State Director. Any facility or activity holding an existing permit must</p> <ol style="list-style-type: none"> 1) comply with the conditions of that permit during any modification or revocation and reissuance proceeding under Sec. 124.5; and 2) to the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed. 		No reference found.	This provision is optional for states.

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124.17	<p>§ 124.17 Response to comments. At the time that any final permit decision is issued, the Director shall issue a response to comments, which shall:</p> <ol style="list-style-type: none"> 1) Specify which provisions of the draft permit have been changed in the final permit decision, and the reasons for the change; and 2) Describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing. <p>For EPA-issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit decision. If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new materials to the administrative record.</p> <p>For state-issued permits, the response to comments shall be available to the public.</p>	47-13-14.30. Injection Well Permitting Program	<p>14.30. Response to Comments. 14.30.a. Any time that any final permit is issued, the Director shall prepare a response to comments. This response shall:</p> <p>14.30.a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and</p> <p>14.30.a.2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.</p> <p>14.30.b. The response to comments shall be available to the public.</p>	<p>Same. The provisions for EPA-issued permits do not apply.</p> <p>2020 revisions to numbering only; no concerns.</p>

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124.18	<p>§ 124.18 Administrative record for final permit when EPA is the permitting authority.</p> <p>For EPA-issued permits, the Regional Administrator shall base final permit decisions on the administrative record consisting of: the administrative record for the draft permit and the following: all comments received during the public comment period (including any extension or reopening); the tape or transcript of any hearing(s); any written materials submitted at such a hearing; the response to comments and any new material placed in the record under that section; other documents contained in the supporting file for the permit; and the final permit.</p>		No reference found.	This provision applies to EPA-issued permits only.
124.19	<p>§ 124.19 Appeal of RCRA, UIC, NPDES, and PSD Permits.</p> <p>Within 30 days after a final permit decision has been issued, any person who filed comments on a draft permit or who participated in the public hearing may petition the Environmental Appeals Board to review any condition of the of the permit decision. The procedure for appeals is provided in this section.</p>		No reference found.	<p>This provision applies to EPA-issued permits only.</p> <p>WV Code 22-11-21 provides for appeals to EQB for UIC permits. WV Code 22-6-28 does allow any person - “any well operator or coal operator adversely affected by a final decision” and “any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director, or by the issuance or denial of a permit, or by the permit’s terms and condition” -- to file an appeal. (OG rule)</p> <p>WV Code 22-6-41 provides for judicial review of permits under the O/G rule.</p>